

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

MARBELLA AT SPANISH WELLS
1 CONDOMINIUM
ASSOCIATION, INC.,

Plaintiff,

v.

Case No: 2:21-cv-641-SPC-MRM

EMPIRE INDEMNITY
INSURANCE COMPANY and
ZURICH AMERICAN
INSURANCE COMPANY,

Defendants.

_____ /

ORDER¹

This insurance dispute was removed from state court. The Court has reviewed the filings to date, as well as the state court docket, and notes that it is unclear whether Zurich American Insurance Company is a party to the suit. The Amended Complaint ([Doc. 4](#)), which was filed in state court, names both Empire Indemnity Insurance Company and Zurich as defendants in the caption but makes no allegations against Zurich. And although the case caption is not determinative of the parties to the suit, see [Lundgren v.](#)

¹ Disclaimer: Documents hyperlinked to CM/ECF are subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide, nor does it have any agreements with them. The Court is also not responsible for a hyperlink's availability and functionality, and a failed hyperlink does not affect this Order.

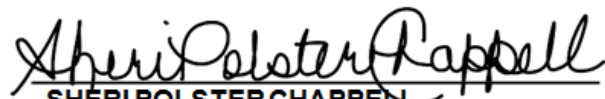
McDaniel, 814 F.2d 600, 604 n.2 (11th Cir. 1987), an email between counsel submitted with the removal papers confuses the issue even more. In the email, Plaintiff's counsel states that it will dismiss Zurich as a party after Empire accepts service but has not done so. (Doc. 1-2 at 2). To clear this up and get this case in the correct procedural posture, the Court needs input from the parties.

Accordingly, it is now

ORDERED:

Plaintiff shall explain, in writing, whether it intends to pursue claims against Zurich, or alternatively may file a notice of dismissal under Federal Rule 41(a)(1)(A)(i) to dismiss Zurich, by **September 17, 2021**.

DONE and **ORDERED** in Fort Myers, Florida on September 14, 2021.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record